

the Examiner under separate cover since at least one of the co-inventors is no longer an employee of the assignee and has moved out of the Portland, Oregon geographical area.

Applicant has made the above amendments to the claims thereby overcoming the rejections under 35 U.S.C. § 112, second paragraph, listed on pages 2 and 3 of the Office Action.

Claims 1-24, 36-55, 74, and 76-99 have been rejected under 35 U.S.C. § 102(a) as being anticipated by Gregory et al, or, in the alternative, under 35 U.S.C. § 103(a) as obvious over Gregory et al in view of Labroo et al.

Applicant has previously amended this application to provide that it is a continuation-in-part of U.S. Serial No. 08/341,881, filed November 15, 1994 ("USSN '881"), and a continuation-in-part of USSN 08/658,855 filed on May 31, 1996 ("USSN '855"). USSN '881 is the parent application of the Gregory et al reference cited by the Examiner. As stated above, Applicants will provide a new Declaration under separate cover. For these reasons, Gregory et al cannot be cited as a prior art reference against this application, particularly either under 35 U.S.C. § 102(a) or under 35 U.S.C. § 103(a).

In claims 98 and 99, applicants have provided amendments adding the language that the biomaterial employed is "consisting essentially of" tropoelastin. The language "consisting essentially of" limits the scope of the claim to those specified ingredients and to those that do not materially affect the basic and novel characteristics of the composition.

Regarding Labroo et al, it is stated in column 4, lines 58-63, that the term "polymer" refers to a substance containing "two or more polypeptide monomers." The term "homopolymer" refers to polymers containing two or more "identical" polypeptide monomers. The term "copolymer" includes a polymer containing two or more "different" types of polypeptide monomers. In either the case of a homopolymer or a copolymer, as defined by Labroo et al, one or both of the polypeptide components must be a first polypeptide monomer which is a

polypeptide monomer crosslinkable by transglutaminase as described therein. In the case of a homopolymer, Labroo et al states that it is two or more of these first polypeptide monomers, and in the case of the copolymer it is this first polypeptide monomer and a second different polypeptide monomer. Tropoelastin is not taught or suggested for use as a first polypeptide monomer by Labroo et al. Tropoelastin is defined, in the disclosure of Labroo et al cited by the Examiner in Col. 9, lines 1-26, as one of a class of materials useful as a second polypeptide monomer, only in copolymer compositions, and only in combination with a first polypeptide monomer which is not tropoelastin. Tropoelastin is never disclosed or suggested as being usable as either a first polypeptide monomer or as a homopolymer component.

The Examiner has introduced the concept of using tropoelastin per se as an "interchangeable" moiety with elastin, which is not specifically disclosed or taught by Labroo et al. This is pure speculation on the part of the Examiner which could have only been arrived at through hindsight reconstruction without any basis in the express teachings of Labroo et al (or Gregory et al even if it were available as a reference, which we posit it is not).

In order to have anticipation under 35 USC Section 102 (b), every element of the claim must be found in the prior art reference. As stated above, Gregory et al is not a valid reference. Labroo et al does not contemplate, suggest or teach the use of tropoelastin except as a second component of a copolymer the different first peptide monomers disclosed therein. Therefore, the requirements for a *prima facie* case of anticipation have not been met by the Labroo reference with respect to the rejected claims.

Regarding the rejection of claims 1-24, 36-55, 74, and 76-99 under 35 U.S.C. § 103(a) as being obvious over Gregory et al in view of Labroo et al, Gregory et al cannot be employed as a reference, and Labroo et al is inapplicable to applicant's claims, for the reasons stated above.

Furthermore, Labroo et al per se does not suggest, teach or provide motivation for obviating the invention set forth in amended claims 1-24, 36-55, 74, and 76-99, for the reasons discussed above.

Claims 47 and 48 have been rejected under 35 U.S.C. § 102(b) as being anticipated by Raboud et al. Merely because elastin can be polymerized as taught by Raboud et al does not mean that tropoelastin can be polymerized as well. In order to have anticipation under 35 USC Section 102 (b), as previously stated, every element of the claim must be found in the prior art reference. Raboud et al does not contemplate, suggest or teach the use of tropoelastin. Only elastin is disclosed therein. Therefore, the requirements for a *prima facie* case of anticipation have not been met by the Raboud et al reference with respect to the rejected claims.

Claims 36 to 48 and 55 have been rejected under 35 U.S.C. § 102(e) as being anticipated by Schwartz et al. In claims 36 to 48 and 55, applicant has added the language that the biomaterial employed is "consisting essentially of" tropoelastin. In order to have anticipation under 35 U.S.C. § 102(b), each and every element of the claim must be found in the prior art reference. Schwartz et al does not disclose, suggest or teach the use of tropoelastin. Therefore, the requirements for a *prima facie* case of anticipation have not been met with respect to those claims by the Schwartz et al reference.

In light of the above arguments and amendments to the claims, it is requested that the Examiner reconsider his rejections. Attorney for applicants will discuss the above matters with the Examiner during the proposed personal interview at the Examiner's office on January 14th.

Marger, Johnson & McCollom, P.C.
1030 S.W. Morrison Street
Portland, Oregon 97205
(503) 222-3613

Respectfully submitted,

Jerome S. Marger
Reg. No. 26,480